

**Is offering a stipend to employees who
don't take the health insurance a
reasonable expenditure of taxpayer
dollars?**

**YES—Absolutely!! Every employee who
takes the stipend saves the taxpayers
approximately \$7,000 per year!**

To the Board of Finance for consideration,

Looking beyond the potential legal issue brought up here tonight, I feel there are three other reasons the Board of Finance should consider a recommendation to the Board of Selectmen that they address the three points outlined below and consider a course to modify the longstanding practice of paying a stipend in lieu of receiving the health insurance policy.

1) Inequity;

The stipend benefit was legally negotiated in good faith with the union members within the town hall. In most cases these are assistants to the department heads. For the most part they earn the same wage which is approximately \$41,400. The current year stipend monthly payment is \$1,163 or \$13,956 dollars annually. With that amount added to the employees' wages, it increases the total compensation from \$41,000 to \$55,356 dollars yearly. Because Social Security benefits are calculated based on the 35 highest grossing years of employment (*after indexing to account for changes in average wages since the earnings were received*). The last 20 years are usually a person's highest grossing years. Because of that, there is the potential that two employees, one taking the stipend and the other receiving the insurance who work in "like" jobs earning the same base salary could retire and one of them will receive significantly higher benefits for the rest of their life.

This presents a potential future liability's for the taxpayer and the employee.

2) Conflict of Interest,

The longstanding practice has been that the Non-union department heads receive the same benefits package as was negotiated with the union.

The conflict is, that non-union department heads may be taking part in the contract negotiations whereas they receive a significant monetary gain as a result of the contract.

3) Wasteful expenditure,

The stipend at \$13,956 dollars is an extremely generous compensation in lieu of receiving health insurance. I believe we have the responsibility to ask ourselves on behalf of the taxpayer, Is this a reasonable expenditure of taxpayer dollars in a town with limited resources?

I do understand the town has a contract thru 2017 with the union. Unless it's somehow found invalid, the Town of Woodstock will be required to honor it. I am not with this letter in any way advocating for breaching the existing contract with the union members.

David Fortin,
Member Woodstock's Board of Finance.

**Why not target just the non-union
employees or elected officials to eliminate
or reduce the stipend?**

Arbitrarily taking away or reducing a (past practice) benefit given to an already small group of employees because they are not unionized would be a very costly mistake, likely leading to:

- **Additional Unions forming**
- **Charges of discrimination based on the Town's own policies**
 - **Hostile Work Environment claims**
 - **Litigation**

Several employees have already sought legal counsel and explored unionization.

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BOF Meeting Minutes 11-09-2015

Fred Chmura would also like to make sure that people getting the stipend have proved that they have insurance as the attorney recommends in #5, and that it should be reviewed by the Finance Office. Treasurer Donna Stefanik said that the health insurance is handled through the Selectmen's Office, and currently not through the Finance Department.

David Richardson stated that the stipend is being funded at the family plan rate. He suggested that the Board of Finance tell the Board of Selectmen to not fund the stipend for the non-union employees during the next fiscal year. He feels that the stipend should be \$2000.00.

David Fortin, seconded by Fred Chmura, made a motion to request a quote for an individual cost of the health insurance coverage under the Town plan.

Treasurer Donna Stefanik felt that this may be a hard figure to come by since the dollar amount was based on the age of the person. David Richardson disagreed and felt that this should be an easy number to come by. Michael Dougherty stated that if the answer was not easily available that perhaps the insurance consultant could come and speak to the Board of Finance.

Chairman Hosmer asked for a vote on the question. **Motion passed unanimously.**

Glen Lessig, seconded by Fred Chmura made a motion to request from the Town health insurance consultant a written opinion if the if the Town healthcare and stipend is in compliance with ERISA and get an opinion from the Board of Education consultant.

David Fortin asked if Ms. Stefanik should contact the health insurance consultant or the Board of Finance. Ms. Stefanik said that if somebody on the Board of Finance wrote a letter, she would be happy to cut and paste the letter onto Town letterhead, and present it to the Board of Selectmen. She felt that since the Board of Selectmen's office handles the health insurance that that office should contact the health insurance consultant. David Hosmer agreed to write a letter, with a deadline for an answer.

Chairman David Hosmer called for a vote on the question. **Motion passed unanimously.**

It was the consensus of the Board of Finance that once a written opinion has been received from both health care consultants that those opinions are forwarded to the Town Attorney, with a request for a final opinion.

Glen Lessig, seconded by Ronal Cabana made a motion to send a copy of the Town Attorney's draft opinion letter to the Board of Selectmen for their review. **Motion passed unanimously.**

7. New Business – Approve BOF calendar for 2016 – 2017 Budget Process: Glen Lessig and Michael Dougherty made a motion to accept the 2016 – 2017 Board of Finance calendar as presented. **Motion passed unanimously.**

8. Review Non-Lapsing Updates: Ms. Stefanik pointed reminded the Board of Finance that at their September 10, 2013 meeting they passed the following resolution: "The Board of Finance requested that the Board of Education come to them before expending funds from the Non-Lapsing Account in the future as the account was created to be used for Capital Plan and emergency expenditures not recurring expenditures." Ms. Stefanik pointed out that the Board of Education has not done this, and the auditor picked up on this during last year's audit. Ms. Stefanik was informed that if this policy continues not to be followed the auditors will write a management letter in regards to this policy not being enforced.

Letter to the BOF from Town Attorney
11-09-2015

2. *Is the language in the union (AFSCME) contract, as noted above, in violation of any regulations under ACA, ERISA, or any other federal or state department of labor regulations? If so, what steps should be taken to correct the situation? The contract does have a "savings clause" should any part of the contract be deemed invalid.*

Response: Section 15.2 of the CBA relates to the wages, hours and other conditions of employment. As such, it is a mandatory subject of collective bargaining under MERA. It provides a common bargained-for-benefit to employees who elect not to take the Town Insurance coverage. The effect of the ACA Employer Mandate is discussed above. The Employee Retirement Security Act of 1974 ("ERISA") establishes minimum standards for pension plans and healthcare plans that are not self-funded. The Town's healthcare plan is currently purchased through Aetna Healthcare. As a traditional policy of health insurance Aetna Healthcare policy is subject to those sections of ERISA that pertain. According to the Town's healthcare consultant, the policy and the stipend program are fully compliant with ERISA. I recommend obtaining a written opinion to that effect from the consultant. In certain circumstances, stipends in lieu of healthcare coverage may be violative of certain provisions of ERISA, ACA and IRS Regulations if the stipend is intended to provide funding for an individual health care policy.

3. *Does the town have any legal obligation to provide a non-union "Town Hall" employee compensation for having declined insurance coverage?*

*Not
Recommended*

Response: Benefits derived from negotiated collective bargaining agreements are not legally required to be extended to employees in non-bargaining positions. But by longstanding custom and practice, however, the Town has extended the same benefits to non-bargaining unit employees as those defined in the AFSCME CBA.

4. *Since the incentive/stipend is considered FICA taxable and so impacts future Social Security benefits, are there any legal Social Security issues/implications that the town needs to be aware of?*

Response: No. I have been informed that the stipend is "after tax" compensation. As such, the stipend payments are considered ordinary income to the employee for the purpose of federal income tax and FICA. Under the Town's pension contracts, the stipend is not included in the definition of "salary" for purposes of pension benefit calculations.

5. *Since the stipend being paid is in excess of that stated in the labor agreement, are there other legal issues related to this overpayment that could present liabilities or other causes for concern for the town? For reference: the labor agreement calls for a stipend equal to one half the cost of the premium for "an employee" plus a monthly allocation of the HSA for a family plan; we are paying one half the costs for an employee plus spouse or family plus the monthly allocation for the HSA for a family plan which is considerably greater.*

Response: The determination of the amount of the stipend being paid under the language of Section 15.2 of the CBA should be reviewed by the Town Finance Department. I have

been informed that the value of the stipend has historically been determined by the cost of the premium for family coverage.

6. Could the town be legally liable for issues regarding fairness or equal pay as a result of these incentives or the way in which they have been administered?

* **Response:** The stipend is a benefit negotiated within the Collective Bargaining Agreement and is available to AFSCME bargaining unit employees and, by longstanding practice discussed above, to non-bargaining unit employees. If another of the Town bargaining unit desires to include a stipend program in their labor contract, it is a necessary subject of the collective bargaining process.

Recommendations

Employer health care benefits are a rapidly evolving field, subject to a variety of federal law and regulations related to the ACA, the IRS and ERISA and the interpretation of those laws by federal administrative agencies, including the U.S. Department of Labor and the IRS. The following recommendations are derived from a review of available federal guidance documents and are intended to insure that the Town's stipend program complies with recent changes in health care law.

- a. The stipend option should not be provided to enable an employee to purchase an individual policy.

Under the ACA, the stipend cannot be a health reimbursement arrangement (HRA) or constitute a promise to reimburse medical expenses. According to a November 6, 2014 guidance document issued by the U.S. Department of Labor, if the stipend plan provides cash reimbursement for the purchase of an individual market policy, it constitutes "group health plan coverage" subject to certain provisions of the ACA and ERISA.

- b. The stipend option must be offered to all eligible employees, without regard to their insurance risk.

The stipend program cannot be used to create incentives to remove "high risk" individuals from the Town's health care coverage. Offering stipends to persons who present high claims risk violates the anti-discrimination provisions of several federal statutes.

- c. The stipend option should require proof of coverage through a spouse or family member.

To enable the Town to document that the above two recommendations are being enforced, the Town should continue to require proof of health care coverage for the employee through a health care plan offered by his or her spouse's employer.

I trust this responds to your inquiry.

Very truly yours,

Town of Woodstock Title VI Policy Statement

Town Policy

* The Town of Woodstock is committed to ensuring that no person is excluded from participation in, denied benefits or otherwise subjected to discrimination under any program or activity on the basis of race, color, religion or belief, gender identity and/or expression, sex (including pregnancy), national, social or ethnic origin, age, physical, mental or sensory disability, HIV status, marital, civil union or domestic partnership status, past or present military service, sexual orientation, family medical history or genetic information, lawful source of income, familial status, ancestry, family or parental status or any other status protected by the laws or regulations in the state of Connecticut.

The Town of Woodstock, as a recipient of federal financial assistance, will ensure full compliance with Title VI of the Civil Rights Act of 1964, as amended, and related statutes and regulations in all Town of Woodstock programs and activities.

Any person who believes that he or she has been subjected to discrimination based on their race, color, religion or belief, gender identity and/or expression, sex (including pregnancy), national, social or ethnic origin, age, physical, mental or sensory disability, HIV status, marital, civil union or domestic partnership status, past or present military service, sexual orientation, family medical history or genetic information, lawful source of income, familial status, ancestry, family or parental status or any other status protected by the laws or regulations in the state of Connecticut may file a Title VI complaint. Complaints may be filed directly to the Town of Woodstock or to the complainant or representative, and should include that complainant's name, address, and telephone number or other means by which the complainant can be contacted. Complaints must be filed within 180 days of the date of the alleged discriminatory act.

To request additional information on the Town of Woodstock's non-discrimination obligations or to file a Title VI complaint, please submit your request or complaint in writing to:

Town of Woodstock
First Selectman's Office
415 Route 169
Woodstock, CT 06281

Complaint forms can be obtained online at the Town of Woodstock website:
www.woodstockct.gov.

Federal Transit Administration (FTA) Title VI complaints may be filed directly to:
FTA Title VI Program Coordinator
East Building, 5th Floor, TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

Federal Highway Administration (FHWA) Title VI complaints may be filed directly to:
FHWA Office of Civil Rights
Investigations & Adjudication Team Director
1200 New Jersey Avenue, SE, Suite E-81
Washington, DC 20590

Town of Woodstock, CT Nondiscrimination Statement

The Town of Woodstock, CT prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal and, where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or if all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Town. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact the USDA by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

The Town of Woodstock, CT is an equal opportunity provider and employer.